

SENATE BILL 856

D1, D3

(2lr2635)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by ~~Senator Raskin~~ Senators Raskin, Forehand, Getty, Gladden, Jacobs, Ramirez, Shank, and Stone

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Maryland Mediation Confidentiality Act**

3 FOR the purpose of establishing that certain communications made in the course of
4 and relating to certain mediations may not be disclosed by the mediators,
5 parties to the mediations, or certain persons who participate in or are present
6 for the mediations, under certain circumstances; establishing certain exceptions
7 for certain communications; providing for the application of this Act; defining
8 certain terms; providing that this Act may be cited as the Maryland Mediation
9 Confidentiality Act; and generally relating to confidentiality of mediation
10 communications.

11 BY adding to

12 Article – Courts and Judicial Proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 Section 3–1801 through 3–1806 to be under the new subtitle “Subtitle 18.
 2 Maryland Mediation Confidentiality Act”
 3 Annotated Code of Maryland
 4 (2006 Replacement Volume and 2011 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Courts and Judicial Proceedings**

8 **SUBTITLE 18. MARYLAND MEDIATION CONFIDENTIALITY ACT.**

9 **3–1801.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 11 INDICATED.

12 (B) “MEDIATION” MEANS A PROCESS IN WHICH PARTIES WORK WITH
 13 ONE OR MORE IMPARTIAL MEDIATORS WHO ASSIST THE PARTIES IN REACHING A
 14 VOLUNTARY AGREEMENT FOR THE RESOLUTION OF A DISPUTE OR ISSUES THAT
 15 ARE PART OF A DISPUTE.

16 (C) (1) “MEDIATION COMMUNICATION” MEANS A COMMUNICATION,
 17 WHETHER BY SPEECH, WRITING, OR CONDUCT, MADE AS PART OF A MEDIATION.

18 (2) “MEDIATION COMMUNICATION” INCLUDES A
 19 COMMUNICATION MADE FOR THE PURPOSE OF CONSIDERING, INITIATING,
 20 CONTINUING, RECONVENING, OR EVALUATING A MEDIATION OR A MEDIATOR.

21 (D) “MEDIATOR” MEANS AN INDIVIDUAL WHO:

22 (1) ASSISTS PARTIES IN REACHING THEIR OWN VOLUNTARY
 23 AGREEMENT FOR THE RESOLUTION OF A DISPUTE; AND

24 (2) ~~HAS COMPLETED AT LEAST 40 HOURS OF BASIC MEDIATION~~
 25 ~~TRAINING; AND~~

26 (3) ~~ADHERES TO THE MARYLAND STANDARD OF CONDUCT FOR~~
 27 ~~MEDIATORS.~~

28 (D) (E) “PARTY” MEANS A PERSON THAT PARTICIPATES IN A
 29 MEDIATION AND WHOSE AGREEMENT IS NECESSARY TO RESOLVE THE DISPUTE.

30 **3–1802.**

1 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS
2 SUBTITLE APPLIES TO A MEDIATION IN WHICH ~~THE~~:

3 (1) THE PARTIES:

4 ~~(1)~~ (1) ARE REQUIRED TO MEDIATE BY LAW OR ARE REFERRED
5 TO MEDIATION BY AN ADMINISTRATIVE AGENCY OR ARBITRATOR; OR

6 ~~(2)~~ (II) AGREE IN WRITING THAT THE MEDIATION
7 COMMUNICATIONS WILL REMAIN CONFIDENTIAL; AND

8 (2) THE MEDIATOR STATES IN WRITING TO ANY AND ALL PARTIES
9 TO THE MEDIATION THAT THE MEDIATOR HAS READ AND, CONSISTENT WITH
10 STATE LAW, WILL ABIDE BY THE MARYLAND STANDARD OF CONDUCT FOR
11 MEDIATORS DURING THE MEDIATION.

12 (B) THIS SUBTITLE DOES NOT APPLY TO A MEDIATION:

13 (1) TO WHICH TITLE 17 OF THE MARYLAND RULES APPLIES;

14 (2) RELATING TO THE ESTABLISHMENT, NEGOTIATION,
15 ADMINISTRATION, OR TERMINATION OF A COLLECTIVE BARGAINING
16 RELATIONSHIP;

17 (3) RELATING TO A DISPUTE THAT IS PENDING UNDER, OR IS
18 PART OF THE PROCESSES ESTABLISHED BY, A COLLECTIVE BARGAINING
19 AGREEMENT UNLESS THE DISPUTE HAS BEEN FILED WITH AN ADMINISTRATIVE
20 AGENCY OR COURT;

21 (4) RELATING TO AN ACTION TO ENFORCE AN AGREEMENT TO
22 ARBITRATE UNDER COMMON LAW, THE FEDERAL ARBITRATION ACT, THE
23 MARYLAND UNIFORM ARBITRATION ACT UNDER SUBTITLE 2 OF THIS TITLE, OR
24 THE MARYLAND INTERNATIONAL COMMERCIAL ARBITRATION ACT UNDER
25 SUBTITLE 2B OF THIS TITLE;

26 (5) RELATING TO AN ACTION TO FORECLOSE A LIEN AGAINST AN
27 OWNER-OCCUPIED RESIDENTIAL PROPERTY SUBJECT TO FORECLOSURE
28 MEDIATION CONDUCTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS
29 UNDER MARYLAND RULE 14-209.1;

30 (6) ARISING FROM A REFERRAL OF A MATTER TO A MASTER,
31 EXAMINER, AUDITOR, OR PARENTING COORDINATOR UNDER MARYLAND RULES
32 2-541, 2-542, 2-543, OR 9-205.2;

1 **(7) CONDUCTED BY A JUDGE WHO MIGHT MAKE A RULING ON A**
2 **CASE BASED ON THE DISPUTE; OR**

3 **(8) IN WHICH THE PARTIES AND THE MEDIATOR, BY A WRITTEN**
4 **AND SIGNED AGREEMENT MADE IN ADVANCE OF THE MEDIATION, AGREE TO**
5 **EXCLUDE ALL OR PART OF THE MEDIATION COMMUNICATIONS FROM THE**
6 **APPLICATION OF THIS SUBTITLE.**

7 **3-1803.**

8 **(A) EXCEPT AS PROVIDED IN § 3-1804 OF THIS SUBTITLE, A MEDIATOR**
9 **OR ANY PERSON PRESENT OR OTHERWISE PARTICIPATING IN A MEDIATION AT**
10 **THE REQUEST OF A MEDIATOR:**

11 **(1) SHALL MAINTAIN THE CONFIDENTIALITY OF ALL MEDIATION**
12 **COMMUNICATIONS; AND**

13 **(2) MAY NOT DISCLOSE OR BE COMPELLED TO DISCLOSE**
14 **MEDIATION COMMUNICATIONS IN ANY JUDICIAL, ADMINISTRATIVE, OR OTHER**
15 **PROCEEDING.**

16 **(B) EXCEPT AS PROVIDED IN § 3-1804 OF THIS SUBTITLE:**

17 **(1) A PARTY TO A MEDIATION AND ANY PERSON PRESENT OR**
18 **OTHERWISE PARTICIPATING IN THE MEDIATION AT THE REQUEST OF A PARTY**
19 **MAY NOT DISCLOSE OR BE COMPELLED TO DISCLOSE MEDIATION**
20 **COMMUNICATIONS IN ANY JUDICIAL, ADMINISTRATIVE, OR OTHER**
21 **PROCEEDING; AND**

22 **(2) THE PARTIES MAY ENTER INTO A WRITTEN AGREEMENT TO**
23 **MAINTAIN THE CONFIDENTIALITY OF ALL MEDIATION COMMUNICATIONS AND**
24 **MAY REQUIRE ANY PERSON PRESENT OR OTHERWISE PARTICIPATING IN THE**
25 **MEDIATION AT THE REQUEST OF A PARTY TO MAINTAIN THE CONFIDENTIALITY**
26 **OF ALL MEDIATION COMMUNICATIONS;~~AND~~**

27 ~~**(2) ANY PERSON PRESENT OR OTHERWISE PARTICIPATING IN**~~
28 ~~**THE MEDIATION AT THE REQUEST OF A PARTY MAY NOT DISCLOSE OR BE**~~
29 ~~**COMPELLED TO DISCLOSE MEDIATION COMMUNICATIONS IN ANY JUDICIAL,**~~
30 ~~**ADMINISTRATIVE, OR OTHER PROCEEDING.**~~

31 **3-1804.**

32 **(A) A DOCUMENT SIGNED BY THE PARTIES THAT RECORDS POINTS OF**
33 **AGREEMENT EXPRESSED BY THE PARTIES OR THAT CONSTITUTES AN**

1 AGREEMENT REACHED BY THE PARTIES AS A RESULT OF MEDIATION IS NOT
2 CONFIDENTIAL UNLESS THE PARTIES AGREE OTHERWISE IN WRITING.

3 (B) IN ADDITION TO ANY OTHER DISCLOSURE REQUIRED BY LAW, A
4 MEDIATOR, A PARTY, OR A PERSON WHO WAS PRESENT OR WHO OTHERWISE
5 PARTICIPATED IN A MEDIATION AT THE REQUEST OF THE MEDIATOR OR A
6 PARTY MAY DISCLOSE MEDIATION COMMUNICATIONS:

7 (1) TO A POTENTIAL VICTIM OR TO THE APPROPRIATE LAW
8 ENFORCEMENT AUTHORITY TO THE EXTENT THAT THE MEDIATOR, PARTY, OR
9 PERSON REASONABLY BELIEVES THE DISCLOSURE IS NECESSARY TO PREVENT
10 ~~SERIOUS~~ BODILY HARM OR DEATH TO THE POTENTIAL VICTIM;

11 (2) TO THE EXTENT NECESSARY TO ASSERT OR DEFEND AGAINST
12 ALLEGATIONS OF MEDIATOR MISCONDUCT OR NEGLIGENCE;

13 (3) TO THE EXTENT NECESSARY TO ASSERT OR DEFEND AGAINST
14 ALLEGATIONS OF PROFESSIONAL MISCONDUCT OR MALPRACTICE BY A PARTY
15 OR ANY PERSON WHO WAS PRESENT OR WHO OTHERWISE PARTICIPATED IN THE
16 MEDIATION AT THE REQUEST OF A PARTY, EXCEPT THAT A MEDIATOR MAY NOT
17 BE COMPELLED TO PARTICIPATE IN A PROCEEDING ARISING OUT OF THE
18 DISCLOSURE; OR

19 (4) TO THE EXTENT NECESSARY TO ASSERT OR DEFEND AGAINST
20 A CLAIM OR DEFENSE THAT, BECAUSE OF FRAUD, DURESS, OR
21 MISREPRESENTATION, A CONTRACT ARISING OUT OF A MEDIATION SHOULD BE
22 RESCINDED OR DAMAGES SHOULD BE AWARDED.

23 (C) A COURT MAY ORDER MEDIATION COMMUNICATIONS TO BE
24 DISCLOSED ONLY TO THE EXTENT THAT THE COURT DETERMINES THAT THE
25 DISCLOSURE IS NECESSARY TO PREVENT ~~A MANIFEST~~ AN INJUSTICE OR HARM
26 TO THE PUBLIC INTEREST THAT IS OF SUFFICIENT MAGNITUDE IN THE
27 PARTICULAR CASE TO OUTWEIGH THE INTEGRITY OF MEDIATION PROCEEDINGS
28 ~~IN GENERAL BY REDUCING THE CONFIDENCE OF PARTIES IN FUTURE CASES~~
29 ~~THAT THEIR COMMUNICATIONS WILL REMAIN CONFIDENTIAL.~~

30 3-1805.

31 MEDIATION COMMUNICATIONS THAT ARE CONFIDENTIAL UNDER THIS
32 SUBTITLE ARE NOT SUBJECT TO DISCOVERY, BUT INFORMATION THAT IS
33 OTHERWISE ADMISSIBLE OR SUBJECT TO DISCOVERY DOES NOT BECOME
34 INADMISSIBLE OR PROTECTED FROM DISCLOSURE SOLELY BY REASON OF ITS
35 USE IN MEDIATION.

1 **3-1806.**

2 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND MEDIATION**
3 **CONFIDENTIALITY ACT.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.